

## ISSUES

Claimant appeals the February 2, 1994, Order denying his request for temporary total and medical benefits for a myocardial infarction. The Administrative Law Judge found that the circumstances did not meet the requirements of K.S.A. 44-501(e) for extreme exertion and that the injury was not otherwise compensable. On appeal claimant acknowledges that his injury was not caused by unusual exertion. Claimant contends the injury is nevertheless compensable because it was caused by an external force and arose out of and in the course of his employment.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Appeals Board takes jurisdiction of this appeal pursuant to provisions of K.S.A. 44-534a. The appeal involves disputed issue of whether the injury arose out of and in the course of claimant's employment afforded by the requirements of K.S.A. 44-501(e).

Based upon the medical and other evidence presented, the Appeals Board finds that external forces of humidity and temperature were a substantial cause of claimant's myocardial infarction and ventricular arrhythmias. The Appeals Board holds that the claimant's injury is, for preliminary hearing purposes, to be considered compensable.

The Appeals Board notes at the outset that it agrees with the decision by the Administrative Law Judge that claimant's myocardial infarction was not caused by unusual exertion. The myocardial infarction occurred after claimant had been mowing on a riding lawn mower for a number of hours but the uncontradicted testimony indicates this was not unusual exertion for claimant in his employment. In his appeal to this Board, claimant abandoned the claim that the injury was caused by unusual exertion. The Kansas Appellate Courts have made it clear, however, beginning with Dial v. C.V. Dome Co., 213 Kan. 262, 515 P.2d 1046 (1973) that K.S.A. 44-501(e) applies only where the exertion of the claimant's work is the agency necessary to precipitate the disability. The statute does not apply where the claimant's disability is a product of some external force or agency. In the Dial case, environmental heat was shown to be the cause of claimant's injury and the claim was, therefore, found to be compensable. A similar finding was made in Makalous v. Kansas State Highway Commission, 222 Kan. 477, 565 P.2d 254 (1977) where cold temperatures were found to be the precipitating cause of the claimant's heart attack and resulting disability. Again, the Court found K.S.A. 44-501(e) did not bar the claim.

In this case the evidence relating to the cause of claimant's heart attack was provided by the letter report of claimant's treating physician, Dr. Brad R. Stuewe. That February 1, 1994, report gives the following opinion:

"The data would suggest that his activity and the heat exposure and exhaustion on the day of his myocardial infarction more likely than not precipitated an acute event. The data would also suggest that the recurrent ventricular arrhythmias were contributed to also by this same exertion and heat exposure."

The Appeals Board reads this report as indicating that both exertion and the heat exposure were causes of the myocardial infarction. The Administrative Law Judge has read this as a "suggestion." The Appeals Board reads it as a statement of the physician's opinion which he believes to be more probably true than not.

Respondent argues that when external forces are claimed to be the cause of a heart attack, the evidence must establish that those external forces were "extreme." In the Makalous, supra., decision the weather conditions are described as an extreme external force. Weather records were introduced in this case indicating that during the period

claimant was working the temperature ranged from the mid-seventies to the low-eighties and the humidity started in the low-eighties and dropped down to nearly seventy percent by the time the claimant had stopped working. The Appeals Board agrees these weather conditions were not unusual for that time of year. Although there was testimony from claimant and one other witness that it was a very hot day, these weather conditions probably also would not be considered "extreme."

The Appeals Board does not, however, consider extreme temperatures to be required to make the claim compensable. As indicated in the Dial and Makalous decisions, the requirements of K.S.A. 44-501(e) do not apply to cases where the factors other than exertion are the substantial causative factors. In the Makalous decision the Court did indicate that extreme external forces were the cause. The term "extreme" is used there to describe the external factors which were, in fact, the cause in that case. The Appeals Board does not, however, read the decision as one requiring that the external force be extreme.

When considering cases involving external forces, the issue becomes whether the injury arose out of and in the course of the claimant's employment. In Taber v. Tole Landscape Co., 181 Kan. 616, 313 P.2d 290 (1957), a case which pre-dates the "heart amendment," the Court considered compensability of a "heat stroke." Respondent there argued, as it has here, that there was nothing unusual about the weather on the day of claimant's injury. In fact, it had been hotter the preceding month. On that basis it was argued that the claimant's heat stroke, caused by exposure to ninety-eight degree weather, was not compensable. The Court rejected this argument and stated:

"Under this record it cannot be denied that claimant's work exposed him to a greater danger than if he had not been working at all. In other words, his employment subjected him to a greater hazard or risk than that to which he otherwise would have been exposed, and although the risk was common to all who were exposed to the heat on the day in question, the true test in a case such as this is whether the employment exposed the employee to the risk. We have no difficulty in agreeing with the trial court that it did, and that there was a direct causal connection between the work and the injury . . . ." (emphasis added)

In this case, as in the Taber case, claimant's employment exposed him to the risk. Whether he otherwise would have been exposed, one can only speculate. Because he was exposed to risk in the course of his employment and because that risk was a substantial cause in producing the heart attack, the Appeals Board considers the claim, at least for preliminary purposes, to be a compensable one. Claimant has met his burden by establishing that the weather conditions to which he was exposed in the course of employment were a substantial cause of that heart attack.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the decision of Administrative Law Judge George R. Robertson, dated February 4, 1994, is hereby reversed and the matter is remanded to the Administrative Law Judge for determination regarding the amount and duration of temporary total benefits and decision regarding medical benefits to be awarded, including selection of an authorized treating physician.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of May, 1994.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

cc: Patrik W. Neustrom, PO Box 1697, Salina, KS 67402-1697  
Jeffrey King, PO Box 1247, Salina, KS 67402-1247  
Robert E. North, 900 SW Jackson, LSOB Suite 552-S, Topeka, KS 66612-1251  
George R. Robertson, Administrative Law Judge  
George Gomez, Director